

9 FAM 41.85
VICTIMS OF CRIMINAL ACTIVITY

*(CT:VISA-1997; 06-07-2013)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.85 RELATED STATUTORY PROVISIONS

(CT:VISA-1997; 06-07-2013)

See INA 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)), INA 101(a)(50) (8 U.S.C. 1101(a)(50)), INA 204(a)(1)(A)(iii), (iv), (v) (8 U.S.C. 1184(a)(1)(A)(iii), (iv), (v)), INA 204(a)(1)(B)(ii), (iii), (iv) (8 U.S.C. 1184(a)(1)(B)(ii), (iii), (iv)), and INA 204(a)(1)(C) & (D) (8 U.S.C. 1184(a)(1)(C) & (D)).

INA 101(a)(15)(U)

(U) (i) subject to section 214(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
 - (II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);
 - (III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
 - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
- (ii) if accompanying, or following to join, the alien described in clause (i)—
- (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or
 - (II) in the case of an alien described in clause (i) who is 21 years of age or

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older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; *stalking*; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; *fraud in foreign labor contracting*; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

INA 214(p)

(p) REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS-

(1) PETITIONING PROCEDURES FOR SECTION 101(a)(15)(U) VISAS- The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii) .

(2) NUMERICAL LIMITATIONS-

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 101(a)(15)(U) in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 101(a)(15)(U)(i) , and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) DUTIES OF THE ATTORNEY GENERAL WITH RESPECT TO "U" VISA NONIMMIGRANTS- With respect to nonimmigrant aliens described in subsection (a)(15)(U)--

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful

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temporary resident status under that subsection, provide the aliens with employment authorization.

(4) CREDIBLE EVIDENCE CONSIDERED- In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) NONEXCLUSIVE RELIEF- Nothing in this subsection limits the ability of aliens who qualify for status under section 101(a)(15)(U) to seek any other immigration benefit or status for which the alien may be eligible.

(6) DURATION OF STATUS - The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii) that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m). The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U) .

INA 245(m)

(m) (1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E) , unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if --

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

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(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii) if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii) .

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).